

PT 01-43

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**OGLE COUNTY
EDUCATIONAL
COOPERATIVE,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0046
(99-71-0019)
P.I.N: 17-15-307-001**

**RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

APPEARANCES: Mr. Michael J. Foley of Foley & Foley on behalf of the Ogle County Educational Cooperative (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on March 16, 2000. Said determination found that real estate identified by Ogle County Parcel Index Number 17-15-307-001 (hereinafter referred to as the "subject property"), was not in exempt ownership, and therefore did not qualify for exemption from 1999 real estate taxes under Section 15-135 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.* (hereinafter the "Code"). At issue herein is whether applicant held any ownership

interest in the subject property, as required by 35 ILCS 200/15-135, at any point during the 1999 assessment year.

The controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Ogle County Board of Review (hereinafter the "Board") on July 16, 1999. The Board reviewed applicant's complaint and subsequently recommended to the Department that the requested exemption be granted. The Department, however, rejected this recommendation by issuing a determination, dated March 16, 2000, which found that the subject property was not in exempt ownership. Applicant filed a timely appeal to this denial and then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that applicant's motion be granted.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on March 16, 2000, which found as follows:

- The property is not in exempt ownership;
- Applicant is not the owner of the property

Administrative Notice

2. The Application For Property Tax Exemption, filed with the Department on August 4, 1999, indicates that the subject property is: (a) located at 204 Main Street, Chana, IL; (b) improved with a 15,500 square foot building; and, (c) used for school classroom and related office purposes.

3. Applicant, a public school joint or cooperative institution organized pursuant to 105 **ILCS** 5/10-22.31, provides special education services to students attending public schools throughout Ogle County and parts of DeKalb, Lee, Stephenson and Winnebago Counties. Applicant Motion Ex. No. 1.
4. Applicant's enabling statute, contained in Article 10 of the Illinois School Code, 105 **ILCS** 5/1-1 *et seq.*, provides, *inter alia*, that:
 - Applicant's operations shall be governed by the terms of a written agreement between its constituent school district boards;
 - Such agreement shall include provisions which govern administration, financing and staff;
 - Applicant has limited authority to issue bonds or notes that raise revenue to fund its operations;
 - Applicant has no independent authority to levy taxes or incur indebtedness; but,
 - Applicant may receive tax revenues and incur indebtedness if its management and a majority of its constituent school district boards approve an annual budget that contains the necessary allocations and allowances.

Administrative Notice of 105 **ILCS** 5/10-22.31.

5. Applicant's primary source of funding comes from assessments paid by member school districts and State reimbursements. Applicant Motion Ex. No. 1.
6. Due to rising enrollment in its member districts, applicant began facing an increasing demand for its services in 1998. In response to this demand, applicant's management determined to acquire additional space, which was to be used to provide services to students with behavioral disorders. Applicant Motion Ex. No. 1.

7. Applicant's management identified the subject property as a site for acquisition but could not afford to purchase the property outright because it was unable to issue necessary construction bonds as a result of excessive indebtedness. *Id.*
8. In order to finance acquisition of the subject property, applicant entered into a lease-purchase agreement with Foresite Capital Facilities Corporation (hereinafter "Foresite"). *Id.*
9. Applicant entered into this agreement for the sole purpose of financing its acquisition of the subject property. *Id.*
10. Applicant's agreement with Foresite, dated March 26, 1998, provides in substance, that:
 - Applicant is to pay various sums certain to Foresite throughout the term of the agreement, which runs from March 26, 1998 through October 31, 2001;
 - These payments consist of: (a) a deposit in the amount of \$40,000.00; (b) an initial payment of \$260,000.00; (c) and semi-annual payments of \$214,000.00;
 - Foresite is to renovate and construct certain specified improvements on the subject property, which are to facilitate applicant's use of the property as a facility for students with behavioral disorders, during that term;
 - Foresite is to complete such renovations and any necessary construction attendant thereto according to a schedule which enables applicant to occupy the premises at the beginning of the 1998-99 school year;
 - Applicant is to occupy the subject property and use same solely for school-related purposes;

- Applicant retains the right to use any empty space situated within the building improvement for storage and related purposes throughout the term of the agreement;
- Applicant is responsible for paying all structural, mechanical and replacement repair costs, utility charges and property taxes which may become payable while the agreement remains in effect;
- Applicant is to enjoy quiet enjoyment of the subject property so long as it does not default on any of the financial or other obligations it assumes under the agreement; and,
- So long as applicant is not in default, then applicant shall retain an option to purchase the subject property, and receive conveyance thereof, when the agreement expires; and,
- Applicant shall be deemed to have exercised this option, without further action, unless, prior to December 31, 1998, it provides Foresite with written notice that it does not intend to exercise its option to purchase.

Applicant Motion Ex. Nos. 1, 2.

11. Applicant did not provide Foresite with the required written notice prior to December 31, 1998. Applicant Motion Ex. No. 1.
12. Applicant was in full compliance with all of its obligations under the agreement throughout the 1999 assessment year. *Id.*

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-

1005(c). There are no genuine issues of material fact in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether the applicant held any legally cognizable ownership interest in the subject property during 1999.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

In furtherance of its Constitutional mandate, the General Assembly enacted Section 15-135 the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*, wherein “[a]ll property of public school districts or public community college districts not leased by those districts or otherwise used with a view for profit,” is exempted from real estate taxation. 35 **ILCS** 200/15-135.

Section 15-135 and other statutes exempting real estate from taxation are to be strictly construed, with all debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Here, the precise “debatable question” is whether applicant’s agreement with Foresite constitutes a lease or other use for profit in contravention of Section 15-135. For the following reasons, I conclude it does not.

Our courts have recognized that, in some circumstances, exemptions should not be destroyed if practical business realities prevent an otherwise exempt organization from obtaining title in its own name. Christian Action Ministry v. Department of Local

Government Affairs, 74 Ill.2d 51 (1978).¹ There, the appellee-Ministry obtained its interest in the property by means of a contract for warranty deed.

The terms of this contract provided, *inter alia*, that: (1) the Ministry was to make a \$30,000.00 down payment and monthly payments of \$2,500.00 toward the purchase price;² (2) the Ministry was to be liable for payment of any and all real estate taxes levied against the subject property; and, (3) no title, legal or equitable, was to pass to the Ministry until the deed was delivered or until the purchase price was paid in full. *Id.* at 54.

The court placed little if any significance on the last condition and specifically noted that:

Regardless of the status of title, [the Ministry] has a substantial monetary interest in the property and is liable for payment of real estate taxes. We cannot perceive any difference in kind between the conventional purchase money mortgage arrangement, which the Department concedes would qualify [the Ministry] for tax exempt status, and the contract for warranty deed which would justify disparate treatment for tax purposes. [Citations omitted].

Had the Ministry arranged a mortgage loan for the property, it would have qualified for tax-exempt status. To penalize [an otherwise exempt entity] for failing to acquire the customary forms of financing, and hence, for making the alternative arrangement of a contract for sale of property in order to carry [out its otherwise exempt activities] runs counter to the stated policy objective and policy consideration of encouraging [such activities].

¹. See also, Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983) (Due to troubled financial history and unavailability of State revenue bonds, appellee employed conveyance and lease-back arrangement to obtain equitable title to property used for charitable purposes).

². The actual purchase price was unspecified in the court's opinion. Christian Action Ministries, *supra*, at 54.

Christian Action Ministries, *supra*, at 61-62.

Here, applicant's debt structure prohibited it from issuing construction bonds that would have enabled it to purchase the subject property by conventional means. Under these circumstances, the reasoning in Christian Action Ministries mandates that applicant ought not be effectively penalized for employing an alternative method for acquiring what otherwise would have been tax-exempt property.

This method vested applicant with a "substantial monetary interest" in the property by imposing significant monetary obligations on the applicant. Applicant fulfilled all of these obligations, which included making a \$40,000.00 down payment and semi-regular payments of \$241,000.00, and held an irrevocable option to purchase the subject property, for the sole purpose of financing its acquisition of that property. Consequently, it cannot be said that applicant's agreement with Foresite constitutes a lease or other use for profit in violation of Section 15-135. Therefore, the Department's initial determination in this matter should be reversed as a matter of law.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by Ogle County Parcel Index Number 17-15-307-001 be exempt from 1999 real estate taxes under Section 15-135 of the Property Tax Code.

July 30, 2001

Date

Alan I. Marcus
Administrative Law Judge